

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II

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In the Matter of the MERCURY REFINING :
SUPERFUND SITE :
 :
American Lamp Recycling, LLC., H-B Instrument :
Company, Inc., H.J. Heinz Company, Lighting Resources, : Administrative Settlement
LLC, Recycle Technologies, Inc., and Western Finger : Agreement and Order on
Lakes Solid Waste Management Authority : Consent
 :
Respondents, : CERCLA - 02-2011-2001
 :
Proceeding under Section 122(g)(4) of the Comprehensive :
Environmental Response, Compensation, and Liability :
Act of 1980, as amended, 42 U.S.C. 9622(g)(4). :
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I. JURISDICTION

1. This Administrative Settlement Agreement and Order on Consent ("Settlement Agreement") is issued pursuant to the authority vested in the President of the United States by Section 122(g)(4) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), 42 U.S.C. § 9622(g)(4), to reach settlements in actions under Section 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607. The authority vested in the President has been delegated to the Administrator of the United States Environmental Protection Agency ("EPA") by Executive Order 12580, 52 Fed. Reg. 2923 (Jan. 29, 1987). This authority was further delegated to the EPA Regional Administrators by EPA Delegation Nos. 14-14-C and 14-14-D and redelegated within Region II to the Director of the Emergency and Remedial Response Division by Regional order No. R-1200, dated November 23, 2004.

2. This Settlement Agreement is issued to American Lamp Recycling, LLC. ("American Lamp"), H-B Instrument Company, Inc. ("H-B"), H.J. Heinz Company ("Heinz"), Lighting Resources, LLC ("Lighting Resources"), Recycle Technologies, Inc. ("Recycle Technologies") and Western Finger Lakes Solid Waste Management Authority ("Western Finger Lakes") ("Respondents"). Respondents agree to undertake all actions required by this Settlement Agreement. Respondents further consent to and will not contest EPA's jurisdiction to issue this Settlement Agreement or to implement or enforce its terms.

3. EPA and Respondents agree that the actions undertaken by Respondents in accordance with this Settlement Agreement do not constitute an admission of any liability by Respondents. Respondents do not admit, and retain the right to controvert in any subsequent proceedings other than proceedings to implement or enforce this Settlement Agreement, the validity of the Statement of Facts or Determinations contained in Sections IV and V, respectively, of this Settlement Agreement.

II. STATEMENT OF PURPOSE

4. By entering into this Settlement Agreement, the mutual objectives of the Parties are:

a. to reach a final settlement among the Parties with respect to the Site pursuant to Section 122(g) of CERCLA, 42 U.S.C. § 9622(g), that allows each Respondent to make a cash payment, including a premium, to resolve its alleged civil liability under Sections 106 and 107 of CERCLA, 42 U.S.C. §§ 9606 and 9607, for injunctive relief with regard to the Site and for response costs incurred and to be incurred at or in connection with the Site, and the claims of each Respondent which have been or could have been asserted against the United States with respect to this Site, thereby reducing litigation relating to the Site;

b. to simplify any remaining administrative and judicial enforcement activities concerning the Site by eliminating a substantial number of potentially responsible parties from further involvement at the Site;

c. to obtain settlement with Respondents Heinz, Recycle Technologies, and Lighting Resources, the non-Ability-to-Pay ("ATP") Respondents, for their respective fair share of response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, and by other persons, and to provide for full and complete contribution protection for Respondents with regard to the Site pursuant to Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5); and

d. to reach a settlement with ATP Respondents for their fair share of response costs incurred and to be incurred at or in connection with the site by the EPA Hazardous Substance Superfund, and by other persons, reduced in consideration of their demonstration of an inability or a limited ability to pay response costs pursuant to Section 122(g)(7) of CERCLA, 42 U.S.C. § 9622(g)(7), and to provide for full and complete contribution protection for ATP Respondents with regard to the Site pursuant to Section 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5).

III. DEFINITIONS

5. Unless otherwise expressly provided herein, terms used in this Settlement Agreement that are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in the statute or regulations. Whenever the terms listed below are used in this Settlement Agreement, the following definitions shall apply:

a. "Adjusted Weight" shall mean the weight of all hazardous substance-containing materials sent or brought to the Site for treatment or disposal prior to February 15, 1994, 15% of the weight of all hazardous substance-containing materials sent to the Site on or after February 15, 1994, but not the weight of batteries sent to the Site after May 15, 1995.

b. "ATP Respondents" shall mean Respondents H-B, American Lamp and

Western Fingerlakes, who have submitted Financial Information demonstrating an inability or a limited ability to pay response costs and, as such, have qualified for a reduced settlement amount and/or an alternative payment method as provided in Section VII of this Settlement Agreement.

c. "CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601-9675.

d. "Day" shall mean a calendar day. In computing any period of time under this Settlement Agreement, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

e. "Effective Date" shall mean the effective date of this Settlement Agreement as provided by Section XVIII.

f. "EPA" shall mean the United States Environmental Protection Agency and any successor departments, agencies or instrumentalities.

g. "EPA Hazardous Substance Superfund" shall mean the Hazardous Substance Superfund established by the Internal Revenue Code, 26 U.S.C. § 9507.

h. "Financial Information" shall mean those financial documents identified in Appendix A.

i. "Interest" shall mean interest at the rate specified for interest on investments of the EPA Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

j. "Paragraph" shall mean a portion of this Settlement Agreement identified by an Arabic numeral.

k. "Parties" shall mean EPA and Respondents.

l. "Respondents" or "Settling Respondents" shall mean American Lamp, H-B, Heinz, Lighting Resources, Recycle Technologies, and Western Finger Lakes.

m. "Response Costs" shall mean all costs of "response" as that term is defined by Section 101(25) of CERCLA, 42 U.S.C. § 9601(25).

n. "Section" shall mean a portion of this Settlement Agreement identified by a Roman numeral.

o. "Settlement Agreement" shall mean this Settlement Agreement and

Administrative Order on Consent and all appendices attached hereto. In the event of conflict between this Settlement Agreement and any appendix, the Settlement Agreement shall control.

p. "Site" shall mean the Mercury Refining Superfund Site, which includes the property known as 26 Railroad Avenue located in the Towns of Guilderland and Colonie, Albany County, New York and is generally shown on the map attached as Appendix B.

q. "United States" shall mean the United States of America, and each department, agency and instrumentality of the United States, including EPA.

IV. STATEMENT OF FACTS

6. The Mercury Refining Site was operated by Mercury Refining Company, Inc. ("Mereco") from the late-1950's until 1998 as a mercury reclamation facility. During this time, special "retort" ovens were used to heat mercury-bearing materials to recover mercury, which was then further processed and refined on the Site before being sold. EPA has catalogued over 7,500,000 pounds of material which was sent to the Site for mercury reclamation.

7. Mercury, which is a hazardous substance as that term is defined in Section 101(14) of CERCLA, 42 U.S.C. § 9601(14), has been released at or from the Site, and there is a threat of further such releases into the environment. In the course of Site processing operations, air emissions, discharges of mercury-containing wastes into a storm sewer, dumping of mercury-containing residues from the retort process, other sloppy materials handling, and a fire, caused mercury to be released onto the soils and into groundwater and surface water at the Site.

8. From 1983, when the Site was placed on the National Priorities List, through November 1999, the lead agency with respect to the planning and implementation of response actions at the Site under the National Contingency Plan, 40 CFR Part 300, was the New York State Department of Environmental Conservation ("NYSDEC"). In November 1999 NYSDEC requested that EPA take over the lead in the remediation of the Site under the Superfund program.

9. As a result of the release or threatened release of hazardous substances, EPA has undertaken response actions at or in connection with the Site under Section 104 of CERCLA, 42 U.S.C. § 9604, and will undertake response actions in the future. Such response actions have included the performance of a Remedial Investigation/Feasibility Study, issuance of a proposed plan and Record of Decision and a responsible party search.

10. In performing these response actions, EPA has incurred and will continue to incur Response Costs at or in connection with the Site. EPA has incurred \$6,109,942.82 in Response Costs through November 30, 2010.

11. In accordance with a 2003 settlement, EPA collected \$497,389.80 from Mereco and and \$30,000 plus Interest, from Leo Cohen, the owner and founder of Mereco. This settlement

was based on Mereco's and Leo Cohen's limited ability-to-pay EPA's Response Costs.

12. In accordance with a 2009 settlement, EPA collected \$3,743,361.69 from 291 *de minimis* parties at the Site who arranged for disposal or treatment at the Site, or arranged with a transporter for transport for disposal or treatment at the Site, of a hazardous substance owned or possessed by such party.

13. In accordance with two 2010 settlements, EPA collected a total of \$161,217.67 from four *de minimis* parties at the Site who arranged for disposal or treatment at the Site, or arranged with a transporter for transport for disposal or treatment at the Site, of a hazardous substance owned or possessed by such party.

14. Each Respondent arranged for disposal or treatment at the Site, or arranged with a transporter for transport for disposal or treatment at the Site, of a hazardous substance owned or possessed by such Respondent.

15. The amount of Adjusted Weight contributed to the Site by each Respondent is less than 1.0% of the total amount of Adjusted Weight contributed to the Site by persons or entities with whom EPA has been able to locate. In addition, the amount of hazardous substances contributed to the Site by each Respondent is less than 1% of the total amount of hazardous substances at the Site. The hazardous substances contributed by each Respondent to the Site are not significantly more toxic or of significantly greater hazardous effect than other hazardous substances at the Site. The Adjusted Weight contributed to the Site by Respondent American Lamp is 19,661.00 pounds, by Respondent H-B is 12,576.04 pounds, by Respondent Heinz is 45 pounds, by Respondent Lighting Resources is 2,250 pounds, by Respondent Recycle Technologies is 3,715.80 pounds and by Respondent Western Finger Lakes is 5,353.93 pounds.

16. EPA estimates that the total response costs incurred and to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund and by other persons is approximately \$16,069,942. The respective payment required to be made by each Respondent pursuant to this Settlement Agreement is a minor portion of this total amount.

17. The United States has reviewed the Financial Information submitted by ATP Respondents to determine whether they have an inability or a limited ability to pay response costs incurred and to be incurred at the Site, taking into consideration the ability of such parties to pay response costs and still maintain their basic business operations, including their overall financial condition and demonstrable constraints on their ability to raise revenues.

V. DETERMINATIONS

18. Based upon the Statement of Facts set forth above and on the administrative record for this Site, EPA has determined that:

- a. The Mercury Refining Superfund Site is a "facility" as that term is defined in

Section 101(9) of CERCLA, 42 U.S.C. § 9601(9).

b. Respondents American Lamp, H-B, Heinz, Lighting Resources and Recycle Technologies are corporations and therefore "persons" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

c. Respondent Western Finger Lakes is a public-benefit corporation chartered by the State of New York and is a "person" within the meaning of Section 101(21) of CERCLA, 42 U.S.C. § 9601(21).

d. Each Respondent is a "potentially responsible party" within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

e. There has been an actual or threatened "release" of a "hazardous substance" from the Site as those terms are defined in Section 101(22) and (14) of CERCLA, 42 U.S.C. § 9601(22) and (14).

f. The actual or threatened "release" caused the incurrence of response costs.

g. Settlement with Respondents is practicable and in the public interest within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

h. As to each Respondent, this Settlement Agreement involves only a minor portion of the response costs at the Site within the meaning of Section 122(g)(1) of CERCLA, 42 U.S.C. § 9622(g)(1).

i. The amount of hazardous substances contributed to the Site by each Respondent and the toxic or other hazardous effects of the hazardous substances contributed to the Site by each Respondent are minimal in comparison to other hazardous substances at the Site within the meaning of Section 122(g)(1)(A) of CERCLA, 42 U.S.C. § 9622(g)(1)(A).

j. Based upon the Financial Information provided by ATP Respondents, the United States has determined that ATP Respondents qualify for a reduction in settlement amount and/or an alternative payment method within the meaning of Section 122(g)(7) of CERCLA, 42 U.S.C. § 9622(g)(7), and are able to make the payment(s) specified in Section VII (Payment).

VI. SETTLEMENT AGREEMENT AND ORDER

19. Based upon the administrative record for the Site and the Statement of Facts and Determinations set forth above, and in consideration of the promises and covenants set forth herein, the following is hereby AGREED TO AND ORDERED:

VII. PAYMENT

20. Within 30 days of the Effective Date, each Respondent shall pay to the EPA Hazardous Substance Superfund its respective amount set forth in Appendix C to this Settlement Agreement.

21. Each Respondent's payment includes an amount for: a) past response costs incurred at or in connection with the Site; b) projected future response costs to be incurred at or in connection with the Site; and c) a premium to cover the risks and uncertainties associated with this settlement, including but not limited to, the risk that total response costs incurred or to be incurred at or in connection with the Site by the EPA Hazardous Substance Superfund, or by any other person, will exceed the estimated total response costs upon which Respondents' payments are based.

22. Each payment shall be made by electronic funds transfer ("EFT"). To effect payment via EFT, Respondents shall instruct their respective banks to remit payment in the required amount via EFT using the following information, or such other updated EFT information:

Amount of payment:

Bank: **Federal Reserve Bank of New York**

Account code for Federal Reserve Bank account receiving the payment: **68010727**

Federal Reserve Bank ABA Routing Number: **021030004**

SWIFT Address: **FRNYUS33**

33 Liberty Street

New York, NY 10045

Field Tag 4200 of the Fedwire message should read:

D 68010727 Environmental Protection Agency

Name of remitter:

Agreement and Order Index number: **CERCLA-02-2011-2001**

Site/spill identifier: **02-76**

The total amount to be paid by each Respondent pursuant to Paragraph 20 shall be deposited by EPA in the Mercury Refining Site Special Account within the EPA Hazardous Substance Superfund to be retained and used to conduct or finance response actions at or in connection with the Site, or to be transferred by EPA to the EPA Hazardous Substance Superfund.

23. At the time of payment, each Respondent shall send notice that such payment has been made by email to acctsreceivable.cinwd@epa.gov, and to:

U.S. Environmental Protection Agency
Cincinnati Finance Office
26 Martin Luther King Drive
Cincinnati, OH 45268

and

Sharon E. Kivowitz
Mercury Refining Site Attorney
Office of Regional Counsel
U.S. Environmental Protection Agency
290 Broadway, 17th Floor
New York, NY 10007

VIII. FAILURE TO MAKE PAYMENT

24. If a Respondent fails to make full payment within the time required by Paragraph 20, such Respondent shall pay Interest on the unpaid balance. If any ATP Respondent fails to make its respective payment in full by the required due date, all remaining installment payments and all accrued Interest shall become due immediately upon such failure, and Interest shall continue to accrue on any unpaid amounts until the total amount due has been received. In addition, if a Respondent fails to make full payment as required by Paragraph 20, the United States may, in addition to any other available remedies or sanctions, bring an action against such Respondent seeking injunctive relief to compel payment and/or seeking civil penalties under Section 122(i) of CERCLA, 42 U.S.C. § 9622(i), for failure to make timely payment.

IX. CERTIFICATION OF RESPONDENT

25. By signing this Settlement Agreement, each Respondent certifies that to the best of its knowledge and belief, it:

a. if requested by EPA, has conducted a thorough, comprehensive, good faith search for documents, and has fully and accurately disclosed to EPA, all information currently in its possession, or in the possession of its officers, directors, employees, contractors or agents, which relates in any way to the ownership, operation, or control of the Site, or to the ownership, possession, generation, treatment, transportation, storage or disposal of a hazardous substance, pollutant, or contaminant at or in connection with the Site;

b. has not altered, mutilated, discarded, destroyed or otherwise disposed of any records, documents, or other information relating to its potential liability regarding the Site after notification of potential liability or the filing of a suit against it regarding the Site; and

c. has and will comply fully with any and all EPA requests for information regarding the Site pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e).

26. Each ATP Respondent further certifies individually that it has a) submitted to EPA Financial Information that fairly, accurately, and materially sets forth its financial circumstances, and that those circumstances have not materially changed between the time the Financial Information was submitted to EPA and the time ATP Respondent executes this Settlement Agreement, and b) fully disclosed any information regarding the existence of any insurance policies or indemnity agreements that may cover claims relating to cleanup of the Site, and

submitted to EPA upon request such insurance policies, indemnity agreements, and information.

X. COVENANT NOT TO SUE BY UNITED STATES

27. In consideration of the payments that will be made by Respondents under the terms of this Settlement Agreement, and except as specifically provided in Section XI (Reservations of Rights by United States), the United States covenants not to sue or take administrative action against any of the Respondents pursuant to Sections 106 or 107 of CERCLA, 42 U.S.C. §§ 9606 or 9607, relating to the Site. With respect to present and future liability, this covenant not to sue shall take effect with respect to each Respondent upon receipt by EPA of all amounts due from that Respondent pursuant to Paragraph 20. This covenant not to sue is conditioned upon the satisfactory performance by each Respondent of its obligations under this Settlement Agreement. With respect to ATP Respondents individually, this covenant not to sue is also conditioned upon the veracity and completeness of Financial Information provided by each ATP Respondent and the certification made by each ATP Respondent in Section IX. If the Financial Information provided by an ATP Respondent in Paragraph 26 or the certification in Section IX is subsequently determined by EPA to be false or, in any material respect, inaccurate, that ATP Respondent shall forfeit all payments made pursuant to this Settlement Agreement and this covenant not to sue and the contribution protection in Paragraph 36 shall be null and void. Such forfeiture shall not constitute liquidated damages and shall not in any way foreclose the United States' right to pursue any other causes of action arising from such ATP Respondent's false or materially inaccurate information. This covenant not to sue extends only to Respondents and does not extend to any other person.

XI. RESERVATIONS OF RIGHTS BY UNITED STATES

28. The United States reserves, and this Settlement Agreement is without prejudice to, all rights against Respondents with respect to all matters not expressly included within the Covenant Not to Sue by United States in Paragraph 31. Notwithstanding any other provision of this Settlement Agreement, the United States reserves all rights against Respondents with respect to:

- a. liability for failure to meet a requirement of this Settlement Agreement;
- b. criminal liability;
- c. liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments; or
- d. liability based upon the ownership or operation of the Site, or upon the transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of a hazardous substance or a solid waste at or in connection with the Site, after signature of this Settlement Agreement by Respondent.

29. Notwithstanding any other provision in this Settlement Agreement, the United States reserves, and this Settlement Agreement is without prejudice to, the right to institute judicial or administrative proceedings against a Respondent seeking to compel such Respondent to perform response actions relating to the Site, and/or to reimburse the United States for additional costs of response, if information is discovered which indicates that such Respondent contributed hazardous substances to the Site in such greater amount or of such greater toxic or other hazardous effects that such Respondent no longer qualifies as a *de minimis* party at the Site because such Respondent contributed 1.0% or more of the total amount of Adjusted Weight contributed to the Site by individuals, corporations or other entities whom EPA has been able to locate, or because such Respondent contributed hazardous substances which are significantly more toxic or are of significantly greater hazardous effect than other hazardous substances at the Site.

30. Notwithstanding any other provision of the Settlement Agreement, the United States reserves, and this Settlement Agreement is without prejudice to, the right to reinstitute or reopen proceedings against any individual ATP Respondent in this action or in a new action, or to commence a new action seeking relief other than as provided in this Settlement Agreement, if the Financial Information provided by any such ATP Respondent, or the certification made by any such ATP Respondent in Section IX of this Settlement Agreement, is false or, in any material respect, inaccurate.

XII. COVENANT NOT TO SUE BY RESPONDENTS

31. Respondents covenant not to sue and agree not to assert any claims or causes of action against the United States or its contractors or employees with respect to the Site or this Settlement Agreement including, but not limited to:

a. any direct or indirect claim for reimbursement from the EPA Hazardous Substance Superfund based on Sections 106(b)(2), 107, 111, 112, or 113 of CERCLA, 42 U.S.C. §§ 9606(b)(2), 9607, 9611, 9612, or 9613, or any other provision of law;

b. any claim arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Constitution of the State of New York, the Tucker Act, 28 U.S.C. § 1491, the Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law; and

c. any claim against the United States pursuant to Sections 107 and 113 of CERCLA, 42 U.S.C. §§ 9607 and 9613, relating to the Site.

Except as provided in Paragraph 33 (Waiver of Claims) and Paragraph 35 (Waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event the United States brings a cause of action or issues an order pursuant to any of the reservations set forth in Section XI (Reservations of Rights by United States), other than Paragraph 28(a) (claims for failure to meet a requirement of this Settlement Agreement) or Paragraph 28 (b) (criminal

liability), but only to the extent that Respondents' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

32. Nothing in this Settlement Agreement shall be deemed to constitute preauthorization or approval of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. 300.700(d).

33. Respondents agree not to assert any claims and to waive all claims or causes of action (including but not limited to claims or causes of action under Section 107(a) or 113 of CERCLA) that they may have for all matters relating to the Site against any other person who is a potentially responsible party under CERCLA at the Site. This waiver shall not apply with respect to any defense, claim, or cause of action that a Respondent may have against any person if such person asserts or has asserted a claim or cause of action relating to the Site against Respondent.

XIII. EFFECT OF SETTLEMENT/CONTRIBUTION PROTECTION

34. Except as provided in Paragraph 33 (Waiver of Claims), nothing in this Settlement Agreement shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Settlement Agreement. Except as provided in Paragraph 33 (Waiver of Claims), each of the Parties expressly reserves any and all rights (including, but not limited to, pursuant to Section 113 of CERCLA, 42 U.S.C. §9613), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto. Nothing in this Settlement Agreement diminishes the right of the United States, pursuant to Section 113(f)(2) and (3) of CERCLA, 42 U.S.C. §9613(f)(2)-(3), to pursue any such persons to obtain additional response costs or response action and to enter into settlements that give rise to contribution protection pursuant to Section 113(f)(2).

35. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other relief relating to the Site, Respondents shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, *res judicata*, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised in the subsequent proceeding were or should have been brought in the instant action; provided, however, that nothing in this Paragraph affects the enforceability of the covenant not to sue included in Paragraph 31.

36. The Parties agree that this Settlement Agreement constitutes an administrative settlement for purposes of Section 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§9613(f)(2) and 9622(g)(2), and that each Respondent is entitled, as of the Effective Date, to protection from contribution actions or claims as provided by Sections 113(f)(2) and 122(g)(5) of CERCLA, 42 U.S.C. §§ 9613(f)(2) and 9622(g)(5), or as may be otherwise provided by law, for "matters addressed" in this Settlement Agreement. The "matters addressed" in this Settlement Agreement

are all response actions taken or to be taken and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person, provided, however, that if the United States exercises rights under the reservations in Section XI (Reservations of Rights by United States), other than in Paragraph 28(a) (claims for failure to meet a requirement of the Agreement) or 28(b) (criminal liability), the "matters addressed" in this Settlement Agreement will no longer include those response costs or response actions that are within the scope of the exercised reservation. In the event that a Respondent's waiver of claims becomes inapplicable in accordance with Paragraph 33, the parties further agree that this Settlement Agreement constitutes an administrative settlement pursuant to which such Respondent has resolved its liability to the United States, as of the Effective Date, for purposes of Section 113(f)(3)(B) of CERCLA, 42 U.S.C. §9613(f)(3)(B), for matters addressed" as defined above.

37. Each Respondent shall, with respect to any suit or claim brought by it for matters related to this Settlement Agreement, notify EPA in writing no later than 60 days prior to initiation of such suit or claim. Each Respondent shall, with respect to any suit or claim brought against it for matters related to this Settlement Agreement, notify EPA in writing within 10 days of service of the complaint or claim upon such Respondent. In addition, each Respondent shall notify EPA within 10 days of service or receipt of any Motion for Summary Judgment and within 10 days of receipt of any order from a court setting a case for trial, for matters related to this Settlement Agreement.

XIV. PARTIES BOUND

38. This Settlement Agreement shall apply to and be binding upon EPA and upon Respondents and their respective successors and assigns. Any change in ownership or corporate or other legal status of Respondents, including but not limited to, any transfer of assets or real or personal property, shall in no way alter Respondents' responsibilities under this Settlement Agreement. Each signatory to this Settlement Agreement certifies that he or she is authorized to enter into the terms and conditions of this Settlement Agreement and to execute and bind legally the party represented by him or her.

XV. INTEGRATION/APPENDICES

39. This Settlement Agreement and its appendices constitute the final, complete and exclusive agreement and understanding among the Parties with respect to the settlement embodied in this Settlement Agreement. The Parties acknowledge that there are no representations, agreements or understandings relating to the settlement other than those expressly contained in this Settlement Agreement. The following appendices are attached to and incorporated into this Settlement Agreement:

"Appendix A" is the list of Financial Documents submitted by ATP Respondents.

"Appendix B" is the map of the Site.

"Appendix C" is the list of settlement amounts and payment schedules.

XVI. PUBLIC COMMENT

40. This Settlement Agreement shall be subject to a public comment period of not less than 30 days pursuant to Section 122(i) of CERCLA, 42 U.S.C. § 9622(i). In accordance with Section 122(i)(3) of CERCLA, 42 U.S.C. § 9622(i)(3), EPA may withdraw or withhold its consent to this Settlement Agreement if comments received disclose facts or considerations which indicate that this Settlement Agreement is inappropriate, improper, or inadequate.

XVII. ATTORNEY GENERAL APPROVAL

41. This Settlement Agreement is subject to the approval of the Attorney General or his designee in accordance with Section 122(g)(4) of CERCLA, 42 U.S.C. § 9622(g)(4).

XVIII. EFFECTIVE DATE

42. The Effective Date shall be the date upon which EPA issues written notice to Respondents that the public comment period pursuant to Paragraph 40 has closed and that comments received, if any, do not require modification of or EPA withdrawal from this Settlement Agreement.

IT IS SO AGREED AND ORDERED:

U.S. Environmental Protection Agency

By: 

Walter Mugdan, Director
Emergency and Remedial Response Division
Region 2

JAN. 5, 2012
Date



In the Matter of the Mercury Refining Superfund Site, Administrative Settlement Agreement and Order, Index No. CERCLA-02-2011-2001.

CONSENT

The Respondent identified below has had an opportunity to confer with EPA regarding this Administrative Settlement Agreement and Order on Consent. Respondent hereby consents to the issuance of this Administrative Settlement Agreement and Order on Consent and to its terms. The individual executing this Administrative Settlement Agreement and Order on Consent on behalf of the Respondent certifies under penalty of perjury under the laws of the United States that he or she is fully and legally authorized to agree to the terms and conditions of this Administrative Settlement Agreement and Order on Consent and to bind such Respondent thereto.

On Behalf of American Lamp Recycling, LLC
Name of Respondent

Thomas J. Paul
Signature

12/1/2011
Date

Thomas J. Paul

Printed Name

As Counsel for American Lamp Recycling, LLC

Title of Signatory

One Park Place
300 South State Street
Syracuse, New York 13202



In the Matter of the Mercury Refining Superfund Site, Administrative Settlement Agreement and Order, Index No. CERCLA-02-2011-2001.

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On Behalf of H-B Instrument Company
Name of Respondent

Eduard Hergesell
Signature

12 July 2011
Date

Eduard Hergesell
Printed Name

President
Title of Signatory



In the Matter of the Mercury Refining Superfund Site, Administrative Settlement Agreement and Order, Index No. CERCLA-02-2011-2001.

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On Behalf of Lighting Resources, LLC
Name of Respondent

Daniel P. Gillespie
Signature

12-12-2011
Date

DANIEL P Gillespie
Printed Name

Member, LLC
Title of Signatory



In the Matter of the Mercury Refining Superfund Site, Administrative Settlement Agreement and Order, Index No. CERCLA-02-2011-2001.

CONSENT

The Respondent identified below has had an opportunity to confer with EPA regarding this Administrative Settlement Agreement and Order on Consent. Respondent hereby consents to the issuance of this Administrative Settlement Agreement and Order on Consent and to its terms. The individual executing this Administrative Settlement Agreement and Order on Consent on behalf of the Respondent certifies under penalty of perjury under the laws of the United States that he or she is fully and legally authorized to agree to the terms and conditions of this Administrative Settlement Agreement and Order on Consent and to bind such Respondent thereto.

On Behalf of H. J. HEINZ COMPANY
Name of Respondent

Don Shaw
Signature

7/29/11
Date

Daniel F. Shaw
Printed Name

Vice President & Deputy General Counsel
Title of Signatory

In the Matter of the Mercury Refining Superfund Site, Administrative Settlement Agreement and Order, Index No. CERCLA-02-2011-2001.

CONSENT

The Respondent identified below has had an opportunity to confer with EPA regarding this Administrative Settlement Agreement and Order on Consent. Respondent hereby consents to the issuance of this Administrative Settlement Agreement and Order on Consent and to its terms. The individual executing this Administrative Settlement Agreement and Order on Consent on behalf of the Respondent certifies under penalty of perjury under the laws of the United States that he or she is fully and legally authorized to agree to the terms and conditions of this Administrative Settlement Agreement and Order on Consent and to bind such Respondent thereto.

On Behalf of RECYCLE TECHNOLOGIES, INC.
Name of Respondent

Lynn M. Petros-Winn
Signature

7/19/11
Date

LYNN M. PETROS-WINN
Printed Name

CEO
Title of Signatory



In the Matter of the Mercury Refining Superfund Site, Administrative Settlement Agreement and Order, Index No. CERCLA-02-2011-2001.

CONSENT

The Respondent identified below has had an opportunity to confer with EPA regarding this Administrative Settlement Agreement and Order on Consent. Respondent hereby consents to the issuance of this Administrative Settlement Agreement and Order on Consent and to its terms. The individual executing this Administrative Settlement Agreement and Order on Consent on behalf of the Respondent certifies under penalty of perjury under the laws of the United States that he or she is fully and legally authorized to agree to the terms and conditions of this Administrative Settlement Agreement and Order on Consent and to bind such Respondent thereto.

On Behalf of Western Finger Lakes SWMA
Name of Respondent

Marjorie T. Torelli
Signature

7-14-11
Date

Marjorie T. Torelli
Printed Name

Interim Administrator
Title of Signatory



APPENDIX A

Financial Documents Submitted By ATP Respondents

Financial Documents Submitted By ATP Respondents

1. American Lamp Recycling, LLC

- a. American Lamp Recycling, LLC Financial Statements for the years ended December 31, 2005-2008.
- b. U.S. Individual Income Tax Return for David Green, Form 1040, Schedule C: Profit or Loss From Businesses for American lamp Recycling, LLC, for years ended December 31, 2005-2008.
- c. American Lamp Recycling Salary Information for years ended December 31, 2005-2008.
- d. Secretary of the State of Connecticut Commercial Recordings Division filings for American Lamp Recycling, LLC.

2. H-B Instruments Company

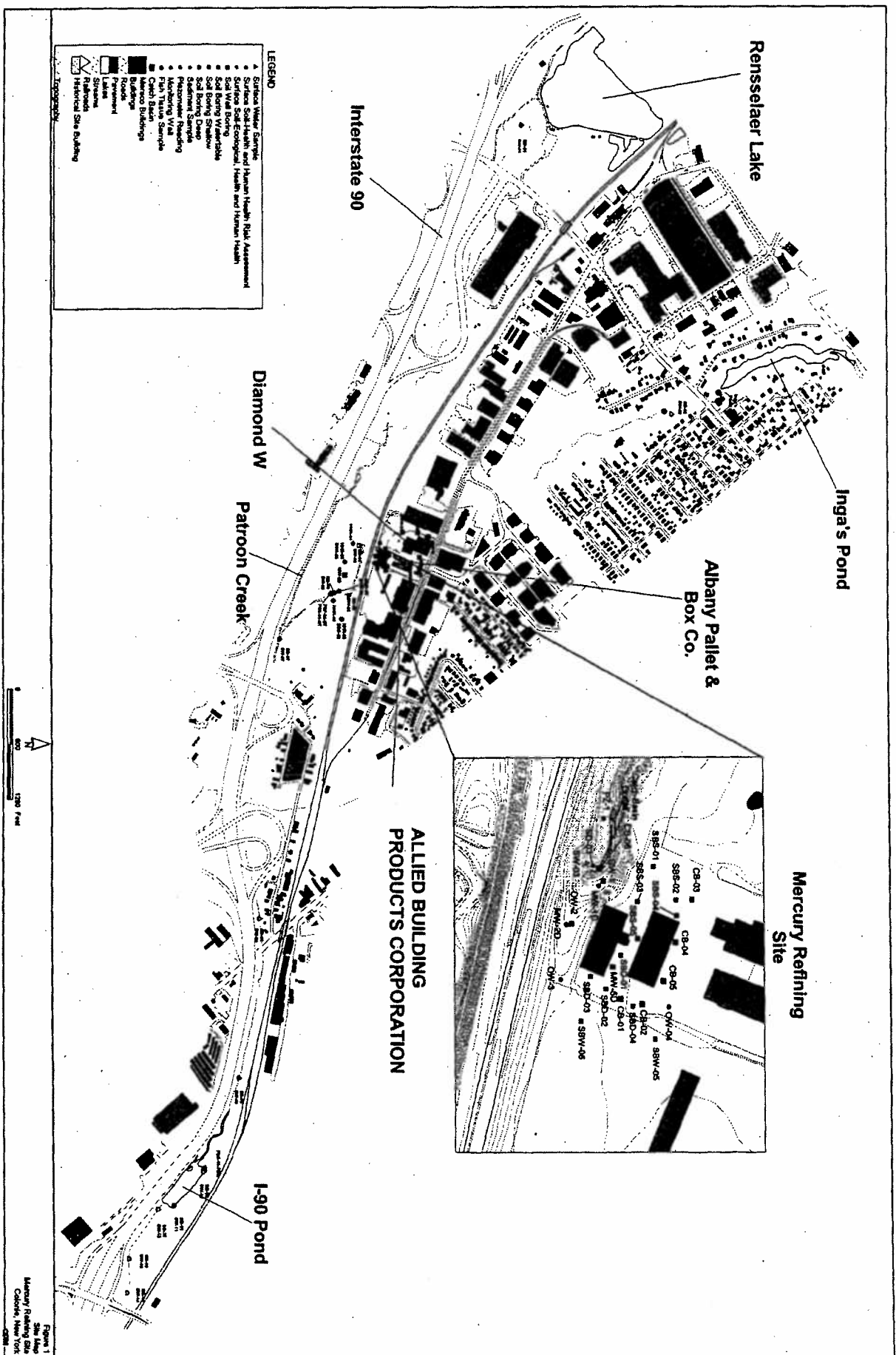
- a. H-B Instrument Company Projected Cash Flow Requirements – Year 2009.
- b. H-B Instrument Company 2009 actual and projected Income Statement, dated May 16, 2009.
- c. H-B Instrument Company Income Statement for the period from January 1, 2009 to April 0, 2009.
- d. H-B Instrument Internal Income Statement for the period from January 1, 2009 to December 31, 2009.
- e. H-B Instrument Company Compensation for Key Employees.
- f. H-B Instrument Company and Subsidiary Consolidated Financial Statements years ended December 31, 2007 and 2008.
- g. H-B Instrument Company 2010 Projected Income Statement and Statement of Cash Flow, dated February 15, 2010.
- h. U.S. Corporation Income Tax Return, form 1120, for H-B Instrument Company and Subsidiary, for years ended December 31, 2006-2008.
- i. PA Corporate Tax Report for H-B Instrument Company, years ended December 31, 2006-2008.
- j. Edward and Staci Hiergesell Financial Data Request Form, October 13, 2010.
- k. Edward and Staci Hiergesell U.S. Income Tax Returns, 2007-2009.

3. Western Finger Lakes Solid Waste Management Authority

- a. Western Finger Lakes Solid Waste Management Authority Audited Financial Statements for Years Ended December 31, 2006-2008.
- b. Western Finger Lakes Solid Waste Management Authority Monthly Internal Financial Statements for May 2008 through April 2009.
- c. Budget Report for Western Finger Lakes Solid Waste Management Authority (PARIS report), as submitted to the New York Authority Budget Office, for fiscal years ending December 31, 2009 and 2010.

- d. New York State Authority Budget Office, Annual Report on Public Authorities in New York State, July 1, 2008.
- e. Western Finger Lakes Solid Waste Management Authority End of Year Revenue and Expense Report for 2009.

APPENDIX B
Site Map



APPENDIX C
List of Settlement Amounts and Payment Schedules

Appendix C

**Mercury Refining Superfund Site
Settlement Amounts and Payment Schedules
Administrative Settlement and Order on Consent, Index No. CERCLA-02-2011-2001**

Unless otherwise shown, payment is due 30 days after Effective Date of Settlement Agreement

Respondent	Settlement Amount
American Lamp Recycling, LLC	\$ 20,000.00
H-B Instrument Company, Inc.	\$ 10,000.00
H.J. Heinz Company	\$ 341.10
Lighting Resources, LLC	\$ 17,054.94 Five payments plus Interest within one year of Effective Date with the first payment commencing within 30 days of the Effective Date and the remaining four payment every 83 days thereafter.
Recycle Technologies, Inc.	\$ 28,166.00
Western Finger Lakes Solid Waste Management Authority	\$ 1,000.00